

# When Trade is Toxic

## The WTO Threat to Public and Planetary Health



*by Jim Puckett*

*Asia Pacific Environmental Exchange (APEX)*

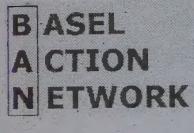
*Basel Action Network (BAN)*

## *A project of:*



**Asia Pacific Environmental Exchange (APEX)** — APEX is devoted to preventing the globalization of mistaken environmental and economic policies particularly in the field of toxics, forestry and fisheries. We advocate globalized campaigning, capacity sharing, and building bridges between and among NGOs across the Pacific Region.

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# When Trade is Toxic

## The WTO Threat to Public and Planetary Health

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# I. An Introduction to the WTO

*"Let me make sure this is clear: Three appointed corporate lawyers, meeting in secret, can invalidate laws passed by Congress and signed by the president of the United States.*

— Denis Hayes, Earthday 2000

From November 29 to December 3 of this year, the World Trade Organization (WTO) will hold its Third Ministerial Meeting in Seattle. To most of the public and indeed many environmental activists, the institution of the WTO signifies something bland, boring or perhaps even benign. Yet increasingly, to more and more social and environmental activists, who never dreamed of ever having to spend their days confronting trade treaties, the WTO is being recognized as public enemy number one — an unexpected new threat with frightening potential. Already the legal instruments crafted under the auspices of the WTO have begun to lay to waste many years worth of hard won reforms on behalf of the environment and public health, and is casting a chilling pall over newly proposed ones. As such, and in a negative sense, the WTO agreements clearly represent the most important “environmental treaty” ever drafted.

To the anti-toxics and public health movement, the WTO’s ability to *kill or chill* our local or national laws and efforts has already proven to be so serious that we can no longer afford to keep our heads buried in local activities, without simultaneously opening a new front at the global level. The WTO represents a frightening gauntlet thrown down at the very pillars of our work for a toxics-free future. Already the WTO:

- 1) **Guts the Precautionary Principle:** The WTO asserts that the Precautionary Principle, arguably the single most important public policy paradigm shift with respect to licensing toxic substances and dangerous technologies, is “non-scientific” and therefore cannot be used as a basis to justify regulatory actions that conflict with trade rules.

- 2) **Undermines the Prevention Principle:** WTO rules attack the heart of another fundamental principle — that of toxics *prevention* and *clean production*, and instead institutionalizes the failed concepts of “pollution control” and “end-of-pipe waste management.” The WTO eliminates most possibilities of prescribing quantitative restrictions (phase-outs and bans). It also severely limits both the market driven, and legislative means, to favor a product based on its life cycle, including preferences for less harmful alternatives, and eco-labeling. Even the global agreement now being negotiated to eliminate persistent organic pollutants (POPs) is under WTO threat.
- 3) **Threatens Global Environmental Justice by Promoting Toxic Trade:** The WTO may prevent governments from imposing so-called “discriminatory” trade bans on hazardous wastes imports or exports. This attack includes



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*Puget Sound's own Orca population is suffering from toxic contamination. A recent study now shows them to be among the most contaminated mammals on earth, with extreme levels of PCBs found in their tissue. Not only does the WTO deny use of the Precautionary Principle that would have prevented the PCB crisis, but it would also make it very difficult to ban or control substances like PCBs in the future.*

the real possibility of overturning the Basel Convention ban on exporting hazardous wastes from OECD to non-OECD countries — an agreement hailed as a landmark for international environmental justice.

In this report we will first explore how the WTO operates and then we will examine each of the above areas in turn in a conceptual manner utilizing illustrative case studies. We make do not claim to present a definitive, exhaustive case of every possible impact from WTO rules. Indeed it is becoming increasingly clear that the ingenuity in using WTO rules to attack environmental laws knows no limit. Rather, we seek to demonstrate conclusively that the WTO juggernaut aims to topple the fundamental principles of our work.

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*Unlike most United Nations treaties, where NGOs can have observer status and a right of access to papers, and all but the most heated of negotiations, the WTO has refused to allow NGOs access to WTO documents, negotiations and working committees.*

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## Whose Trade Organization?

The power of the WTO stems from the fact that to date the institution has almost exclusively represented the interests of a very small but influential sector of our society — that of large, often transnational corporations. This imbalance in global governance has in large part been exacerbated by its obscurity — both by default and by design.

Until recently the WTO was an overlooked, “business-page” matter, a stuffy international collection of suits that simply worked to reduce tariff percentages. The negotiations took place in international conference halls, far removed from the public eye. There, powerful multinational corporate lobbies have been able to hold even more influence than they possess in national capitols more regularly scrutinized by journalists and public interest organizations. Governments, already with a propensity to give corporations what they want, have thus been under little pressure in these closed-door debates to balance the needs of the public.

Spending our days “acting locally,” environmentalists have too often ignored international fora, in particular economic institutions. With the Uruguay Round (1994) when the General Agreement on Trade and Tariffs (GATT) hatched into several agreements under the new umbrella of the WTO, non-governmental organizations (NGOs) were caught off-guard. That round marked a sweeping expansion of WTO scope not only over traditional trade matters, but suddenly over almost all areas

of human endeavor. Those green activists that did observe earlier GATT/WTO negotiations were largely satisfied that the core agreements contained what appeared to be a large exemption (Article XX) to allow countries the sovereign right to escape trade rules if this

was necessary for the protection of the environment or human health. This exemption has since proven to be a worthless placebo.<sup>1</sup>

Apart from a lack of vigilance on the part of civil society, the WTO and its member governments have intentionally limited the influence civil society can have within the WTO and in shaping national WTO negotiating policies, while allowing high levels of access to corporate interests. Industry admits this is true while still decrying new efforts at balancing the equation. According to Timothy Deal, senior vice president for the U.S. Council for International Business (USCIB) it would be a “major mistake” to involve the public.<sup>2</sup> One WTO official quoted in a recent Financial Times report said that the WTO “is the place where governments collude in private against their domestic pressure groups. Allowing NGOs in could open the doors to . . . all kinds of lobbyists opposed to free trade.”<sup>3</sup> And from a USCIB policy paper on civil society: “the business community has a unique role in trade negotiations — one more substantially diverse and relevant to commercial negotiations than other societal groups.”<sup>4</sup> With this manner of thinking, governments have intentionally locked out civil society and have intentionally held the door wide to corporate influence.

Unlike most United Nations treaties, where NGOs can have observer status and a right of access to papers, and all but the most heated of negotiations, the WTO has refused to allow NGOs access to WTO documents, negotiations and working committees, including the Committee on Trade and the Environment (CTE). Likewise many governments have limited the access of their national NGOs to key negotiation meetings while allowing full access by corporate interests. In July of this year, for example, a number of environmental organizations have been forced to file a lawsuit against the US Trade Representative and the Commerce Department under the Federal Advisory Committee Act which requires advisory committees to be "fairly balanced" in terms of points of views represented.<sup>5</sup> For an idea of how far the administration is from that mandate see the list found in "Who Decides?" (see right).

While promises about a new transparency at the WTO have been echoing loudly through their halls and in the White House for the last few years, months, and days, the *only* move the WTO has yet made is to make final documents available on their website *six months after* the negotiations have concluded.<sup>6</sup>

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*This new salvo against basic environmental laws which impact profit can mean a fundamental reversal and dismissal of the Polluter Pays Principle*

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## Winning the Race to the Bottom

It is in this closeted, rarified environment that the WTO so far has been able to leave civil society reeling in its wake and press forward with its objectives on behalf of large corporations. The first goal on that agenda is to limit governmental law-making and regulatory authority to ensure minimal interference with transnational business. This is known as "*trade liberalization*."

Second, for those rules that *are* deemed necessary, including those of the WTO itself, these rules must be applied uniformly, to all nations equally, as the

## Who Decides?

*The following is a listing of the affiliations of the 34 members of the only US Advisory Committee helping shape US policy on trade in the chemicals sector — the Industrial Sector Advisory Committee 3.*

E.I. du Pont de Nemours & Company, Chairman  
Fanwood Chemical, Vice-chairman  
Eli Lily and Company  
The Society of the Plastics Industry, Inc.  
Occidental Chemical Corporation  
National Paint & Coatings Association  
S.C. Johnson & Son, Inc.  
Hemisphere Polymer & Chemical Company  
Milliken & Company  
SACMA  
Pfizer Europe  
Solutia, Inc.  
The Dow Chemical Company  
National Petrochemical and Refiners Association  
Pharmaceutical Research and Manufacturers of America  
Charkit Chemical Corporation  
American Crop Protection Association  
Merck & Company, Inc.  
Troy Corporation  
Crompton and Knowles Colors, Inc.  
CF Industries, Inc.  
Chemical Manufacturers Association  
Eastman Kodak Company  
Union Carbide, Inc.  
Genzyme Corporation  
Eastman Chemical Co.  
The Cosmetic, Toiletry and Fragrance Association  
PPG Industries, Inc.  
Synthetic Organic Chemical Manufacturers Association  
Rohm and Haas  
Bristol-Myers Squibb Co.  
Buffalo Color Corporation  
Schering-Plough Pharmaceuticals  
The Fertilizer Institute

WTO is proud to claim — without “*discrimination*.” This is known as “*harmonization*.”

The third, *unspoken agenda* derives automatically from the combined effects of: the so-called “non-discrimination” policy; the consensus nature of creating international law; and the overarching dominance of corporate interests within the WTO. This agenda asserts that the overwhelming tug and pull of uniform rules and standards that we are to apply “without discrimination” across the globe *will represent the lowest global common denominator*. As true multilateralism (where every country agrees the same standards), does not exist, *any* country that has stronger laws than another can be said to be “discriminating” against that possessing weaker standards, when such laws impact trade. Conversely though, countries with higher standards can say that they are victims of discrimination in the form of “eco-dumping” and are placed at a competitive disadvantage from the lower standards. The reason this latter argument goes nowhere within the WTO is due to the corporate dominance in that forum. It is much more advantageous for corporations to simply relocate operations and take advantage of both cheaper labor and lower standards rather than attempt to raise standards worldwide. Thus, rather than a ratcheting-up so that all nations can enjoy higher standards of global protection, the WTO serves as a whip to guarantee a global race to the bottom.

Indeed there was a time not so long ago in the global toxics movement when we concerned ourselves with how we could assist the South and Eastern European nations to “leap-frog” over the mistaken policies (e.g. end-of-pipe waste management) that characterized the dirty industrialization of the North and West.<sup>7</sup> Now in an age where corporations have been able to both promote globalization on an uneven playing field and write the rules of the game as if that playing field were in fact even, we are facing the likelihood of all frogs in the global pond leaping eagerly backwards, one over the other towards the lowest global levels of environmental insensitivity ever known. And all

of this is happening at a time when that pond is heating up with critical, unprecedented threats from the irreversible impacts on our planet’s climate and the genetic integrity of its species.

## Trashing our Laws

Following the Uruguay Round adoption on January 1, 1995, the WTO leaped far beyond reducing tariffs to an all-out attack on so-called “non-tariff barriers to trade.” Another word for these so called “trade barriers,” sometimes known as “Technical Barriers to Trade,” are “*laws*.” These laws include regulation governing all forms of commerce including, production, products, services, investment, intellectual property rights etc., that might serve as a “barrier to trade” by reducing profit potential. It is this vast array of laws

on which the WTO’s teeth are now firmly set.

As most environmental laws are based on trying to make industry internalize its environmental costs, most environmental laws are, by definition, potential non-tariff trade barriers. The move against non-tariff trade barriers, justified in the name of eliminating “disguised protectionism,” was a major trump for the corporate over the public agenda. While corporations sometimes gain and sometimes lose from tariffs, they almost always gain from the weakening of national or local environmental laws.

Already, without even discussing the chill effect on future initiatives, the WTO and its step-child, the North American Free Trade Agreement (NAFTA) has reversed local, state, and national legislative efforts for which toxics activists have been diligently and doggedly striving for many years. The list of examples is already appallingly long and is expected to increase rapidly as corporate lawyers discover the vast scope and power of WTO roles to sabotage pesky legislation.

This new salvo against our basic environmental laws which impact profit can mean a fundamental reversal and dismissal of the Polluter Pays Principle which requires that profits must indeed be impacted if they result from externalizing costs to the public or global commons. Specifically, it can mean possible denial of future, and reversal of existent: toxic substance bans such as that on DDT, EDB, PCBs, 2,4,5,-T etc.; import and export bans of toxic wastes, products or technologies; recycling quotas; government procurement mandates; labeling requirements; permitting requirements such as those under the US Resource Conservation and Recovery Act (RCRA), and many other requirements imposed by basic environmental legislation that might impact the profits made via transboundary movement of capital, products or services.

Even international gains, made on a multilateral basis such as those found in multilateral environmental treaties (MEAs) like the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal, or those hoped to be achieved in the nascent treaty to eliminate persistent organic pollutants (POPs) are at great risk due to contradictory WTO rules. Already there is a discussion by governments on how to make these treaties unequivocally subservient to WTO rules.

## A Tiger with Teeth

Unlike, most International Treaties (including all MEAs), which are often derided as paper tigers governments have granted the WTO unprecedented powers. Not only has the WTO established a binding judicial mechanism in its dispute settlement agreement, but it has been granted an enforcement mechanism, absolutely unique in international law.

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*Another word for these so called “trade barriers,” sometimes known as “Technical Barriers to Trade,” are “laws.”*

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The dispute settlement panel’s power within the WTO is almost feudal in its draconian, unaccountable modus operandi. The panel ordinarily consists of three corporate lawyers, that meet in complete secret, arriving at decisions with or without input which only they can request. There are no conflict of interest regulations, and the panelists have little appreciation of national or international environmental, human rights or labor laws.<sup>8</sup> These three persons, then interpret the rules of the WTO (ignoring other possibly conflicting treaties), to make final rulings which can invalidate laws passed by Congress or any democratically elected Parliament

around the world. Their decision can be appealed; but once the appellate body (another similar panel) makes its determination, the matter is final and can only be overturned by a consensus of all of the 134 WTO member countries (this including the country which originally brought the challenge).<sup>9</sup> So far in each of the five dispute settlements dealing with the environment or public health, the WTO has achieved a perfect record 5-0 against environmental protection laws.

In addition to being the law, the judge, and the jury, the WTO is the world’s first treaty with a serious enforcement mechanism authorizing countries to levy significant financial sanctions against those governments unwilling to jettison their domestic democratic decisions in a timely manner. These penalties hurt innocent farmers, businessmen, and workers whose production is allowed to be sanctioned. The most recent example involves the United States and Canada’s right to levy 100% retaliatory trade duties against European Union (EU) farm products to the tune of nearly \$125 million each year unless and until the European Union agrees to deny the wishes of its public and allow imports of US and Canadian beef polluted by artificial hormones.<sup>10</sup>

## Early Harvest in Killer Chemicals

For the 3rd Ministerial Meeting of the WTO, the "chemical and allied products" sector has been included in the list of the market sectors targeted for "early harvest" (Advanced Tariff Liberalization) agreements. This means that this sector is expected to be on a faster track with the agreements well concluded by the end of the meeting if not before. In fact the chemical sector harmonization has been agreed by many countries in 1994 and now the goal is to achieve much wider participation and continue moving toward the agreed tariff lowering targets — 0-6.5%. This chemical sector liberalization is one which the US government has placed high on its agenda. The United States produces about one fourth of the world's chemicals which in 1997 amounted to about 74.6 billion dollars in exports.<sup>93</sup>

By a simple principle of economics, tariff liberalization, lowers prices which increases demand, which in turn increases consumption. Greater consumption in chemicals worldwide, means more chemicals ending up in the environment, in our food and in our bodies.

While not all chemicals are hazardous, the list of chemicals for which trade liberalization will be sought includes such killers as tetraethyl lead, CFCs, HCFCs, vinyl-chloride, asbestos, chlorinated solvents, DDT and countless other pesticides.<sup>94</sup> Some of these chemicals such as tetraethyl lead, DDT and asbestos are banned in many developed countries and are exported from countries like the United States and Canada to developing countries where they are responsible for much death, birth defects, cancer and other forms of dysfunction and disease.

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never discussed the issue or been briefed about it.<sup>95</sup> Rather the *only* advisory committee addressing this subject is the Industry Sector Advisory Committee (ISAC 3) — a veritable "Who's Who" of the most powerful US chemical companies (see box "Who Decides"). When this matter of consultation was raised with USTR's Barbara Norton, in charge of the chemicals sector, she replied "Why should anybody discuss it? Its already agreed."<sup>96</sup>

Thus according to USTR's office and members of the TEPAC, to date there has been *no* discussion of how trade liberalization in chemicals might impact the environment, nor a discussion about distinguishing sustainable and unsustainable trade in the vitally important chemical sector. Nor is such a discussion envisaged.



Greenpeace

*WTO rules call for liberalizing all forms of toxic trade. Our ports and communities are way-stations for toxic products, toxic technologies and toxic wastes. WTO rules have no way of distinguishing from the trade in "goods" and the trade in "bads".*

It is outrageous that such potentially devastating liberalization of trade in these killer chemicals is being promoted and accomplished without public debate. In the US negotiation of this agreement and with respect to its implementation there has been no civil society participation. The Trade and Environment Advisory Policy (TEPAC) has

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# Enough is Enough!

"We are writing the constitution of a single global economy", declared former WTO chief Mr. Renato Ruggiero.<sup>11</sup> Thus it is that quite silently and without any black helicopters, the WTO has become the closest thing ever achieved to a world government. As Denis Hayes of the Coalition for Environmentally Responsible Economies (CERES) has put it, "At first invisible to the public, the WTO has become the stealth super-power."<sup>12</sup> Unfortunately this new world government was not derived from the consent of the global public. Rather it is has been penned by trade ministers and officials unduly influenced both from within and from without by free trade zealots and transnational corporations, all standing to profit from the undoing of regulatory "trade barriers."

The Seattle or Millennium Round to be launched this year in Seattle, promises more of the same types of attacks on our democratic right to protect our environment. This round is expected to include a push by some governments to resurrect the Multilateral Agreement on Investments (MAI) which would expand the scope of the WTO to investments. The MAI would go beyond allowing foreign governments to challenge national envi-

ronmental laws, but would grant that right of direct action to corporations as well. The MAI was provisionally scuttled last year by activists mobilized and united around the world via the Internet.

The initial victory we have achieved over the MAI

is a bellwether of what can be achieved by making ourselves heard at the upcoming Seattle Ministerial Meeting. We must demand an end to a trade *über alles* mentality; an end to a WTO that exists in a rarified corporate

policy vacuum; and end to the promotion of blind greed in the name of "freedom." Later this fall, religious, labor, human rights, farm and environmental activists from across the political spectrum and around the world will be convening in Seattle to send two clear consensus demands:

- ✓ *that the doors to the WTO are opened to all of us; and*
- ✓ *that a halt is called to all new negotiations, and that the damage inherent in past agreements is reviewed and repaired.*

Please join us in Seattle while remembering that this fight will extend long past the occasion of the 3rd Ministerial meeting. We have just begun.

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settlements dealing with the environment  
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## II. Throwing Precaution to the Winds

*"As we work to create a future where children can be born free of chemical contamination, our scientific knowledge and technological expertise will be crucial. Nothing, however, will be more important to human well-being and survival than the wisdom to appreciate that however great our knowledge, our ignorance is also vast. In this ignorance we have taken huge risks and inadvertently gambled with survival. Now that we know better, we must have the courage to be cautious, for the stakes are very high."*

— Theo Colborn, from "Our Stolen Future."

Of all of the recent developments in environmental policy the one holding the most hope for human beings to rationally protect their health and environment in the face of proliferating and potentially destructive technologies and products is a simple concept known as the Precautionary Principle. Yet to industry, the Precautionary Principle is an anathema, a call to arms, and they have found in the WTO a weapon for its mass destruction.

The Precautionary Principle is actually the embodiment of traditional common sense in managing technological risk. Thus it is very odd that with respect to public policy, it is somehow seen as revolutionary or controversial. It's a concept every grandmother would embrace and in fact is encapsulated in well worn adages passed on from generation to generation such as "a stitch in time saves nine", "look before you leap", "an ounce of prevention is worth a pound of cure," "fools rush in where angels fear to tread", "better safe than sorry," and "when in doubt, do without."

Put more legalistically, the Precautionary Principle posits that: *where an activity raises threats of harm to the environment or human health, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.*<sup>13</sup>

### The Most Scientific Approach

Because the Precautionary Principle proposes regulatory action in the absence of full scientific proof, it has been erroneously characterized as being "unscientific". But scientists the world over have pointed out that proper science *must* recognize and account for what is unknown as well as known. Certainly no scientist would ever argue that the absence of absolute proof of harm means that a material or technology is not harmful. Indeed many scientists

that have truly delved into the issue of science and precaution have made the case that the Precautionary Principle is the most rigorous and prudent public policy in a world buffeted by the potentially irreversible technological impacts of the our nuclear, biotechnology, and chemical industries.<sup>14</sup> The chemical industry alone has produced around 100,000 chemicals that remain in common use

(of which only about 1.5 to 3 percent have been tested for carcinogenicity) with about 1,000 more compounds being introduced each year.<sup>15</sup>

Much has been written about the Precautionary Principle, but perhaps it is most important to note two fundamental paradigm shifts from current thinking that the principle requires of us:

- The Precautionary Principle demands the *shifting of the burden of proof* on those who would introduce new technologies or substances into the environment to prove that they are likely to *not* be harmful, rather than the other way

around. For too long we have granted chemicals, nuclear isotopes, and genetically modified organisms, "constitutional rights" — that is, they are considered innocent until proven guilty. The Precautionary Principle reverses this onus, placing clear preference toward the right of human beings and other species to live in a pollution free world over the right of manufacturers to release untested technologies and chemicals into our environment.

- The Precautionary Principle asserts that *needless, avoidable risks are risks not worth taking*. Rather than assessing new risks with the presumption that we must tolerate them, as is done in "risk assessment," the Precautionary Principle argues for progressive *risk reduction* questioning whether introduced technologies are worth the risk of making the entire planet the subject of an irreversible experiment. Remarkably, in the absence of a precautionary approach, our past and current policy has allowed industry to subject society to more and more cumulative risks which are absolutely unnecessary for our survival or even for maintaining a very high quality of life. On the contrary, the increasing, cumulative and compounded effects of these needless risks cause great harm to our quality of life.

The only real advantage in ignoring precaution is that which is gained by industry in turning a corporate profit during that dangerous period of time between the introduction of a risky substance or technology, and the point in time where it becomes painfully obvious that we must ban or place it under restriction. This is what noted biologist Sandra Steingraber has called "the dead body approach: wait until damage is proven before action is taken. It is a system tantamount to running an uncontrolled experiment using human subjects."<sup>16</sup>

#### Some historical cases in point:

- **cigarettes** are perhaps the first historical example of unexplored toxic impacts coming back to haunt us. Before the widespread use of cigarettes, lung cancer was a very rare disease. Indeed, even after tobacco smoke was

seen as being a possible cause of heart disease and cancer, the industry was able to claim for decades that there was insufficient *proof*. According to the World Health Organization (WHO), in the next 25 years tobacco related disease is expected to kill about 8.4 million people annually.<sup>17</sup> In the United States alone costs us an estimated 72 billion dollars each year.<sup>18</sup>

- **tetraethyl lead (TEL)** was added to gasoline since 1922. Warnings by public health officials at the time went unheeded as *proof* of its danger was lacking. As a result the compound was not banned until the 1980s, so far only in developed countries. TEL is still exported from the United States to developing countries. The burning of gasoline has been the single largest source (90%) of lead in the atmosphere since the 1920s, resulting in tens of millions of Americans suffering from various forms of lead poisoning including brain damage of children, their intelligence permanently impaired from lead dust.<sup>19</sup>



Gas additive tetraethyl lead (TEL) is banned in the United States. However it is still manufactured for export to developing countries. The WTO lists TEL as part of their chemical sector tariff reduction program. Why are we promoting trade in something that should be globally banned?

seemingly safe to animals and humans. Yet they were never tested for their longer term effects. These compounds were revealed as killers in Rachel Carson's landmark book, *Silent Spring*, and almost caused the extinction of numerous bird

species, including the Bald Eagle. Many of these species are still recovering decades after most countries have banned the compounds, while DDT and its breakdown products are still found everywhere throughout the globe.

- PCBs were introduced in 1929 and became the first big success story of organic chemists. They were unleashed into the marketplace and environment in massive quantities due to their unique ability to retard heat and fire and remain stable. Evidence began to emerge in 1936 that these compounds were not so safe but they were not finally banned in the USA until 1976 after they were discovered in virtually every environment and living organism on the planet. PCBs are associated with dioxin production, found to be immune system depressants, and animal carcinogens. It is now estimated that so far 1.5 million tonnes have been produced and most of this amount has yet to be destroyed.<sup>20</sup> The total monetary cost to society for the PCB mistake alone will be astronomical.

*"The cost of mitigating and cleaning up environmental mistakes and, in all likelihood the loss of life, are orders of magnitude higher than the costs of preventing those mistakes by the exercise of precaution."*

— Dr. Herman Daly, economist

- Thalidomide, in 1959 was hailed as a "wonder drug" that provided a "safe, sound, sleep." But it was never tested for long-term effects. It was prescribed to pregnant women to combat

many of the symptoms associated with morning sickness. It was not realized that Thalidomide molecules could cross the placental wall affecting the foetus until it was too late. Thalidomide eventually caused deformities in an estimated 20,000 persons of which 5,000 survived. Survivor's babies are also showing deformities.<sup>21</sup>

- Ozone Depleting Substances, such as CFCs are a classic example of technological "leaping before looking." They were introduced in the 1970s as non-toxic substitutes for various commercial uses. But their impacts on the world's ozone layer were not considered. Now industry is determined to compound the error of avoiding precaution. While being forced to replace CFCs, they have promoted HCFCs which are also very harmful as potent Greenhouse gases, which cause global warming.



*Failure to implement the Precautionary Principle in chemical regulation almost led to the extinction of our national symbol — the Bald Eagle. It was saved by banning the use of pesticide DDT. WTO rules deny the use of the Precautionary Principle, and deny the use of bans.*

Indeed, because we have allowed scientific uncertainty to postpone controls in dangerous activities rather than facilitate precautionary action, we now live in a world where: much of the world's fresh water fish are contaminated with mercury; the earth's ozone layer has been eroded; the planet's climatic control mechanism is seriously out of order; coral reefs are dying and turning a ghastly white; piles of extremely long-lived and toxic radioactive waste and products mount daily; average human sperm counts appear to have declined 50% in 50 years; immune system disorders such as asthma and diabetes are rising dramatically; environmentally induced cancers are epidemic.

And what has it cost us in economic terms? Well known economist Dr. Herman Daly has ex-

claimed, “Lord, it’s such common sense! The precautionary principle should be used throughout economic decision making. The cost of mitigating and cleaning up environmental mistakes and, in all likelihood the loss of life, are orders of magnitude higher than the costs of preventing those mistakes by the exercise of precaution. It is essential for our economy in the 21st century, to implement the Precautionary Principle.”<sup>22</sup>

## WTO/Industry Embrace of “Risk Assessment”

The Precautionary Principle was first introduced into environmental laws in Europe and thanks to international organizations such as Greenpeace has since found its way into many influential international treaties including the Maastricht Treaty, part of a series of treaties forming the legal basis for the European Union (EU).<sup>23</sup> However, while environmentalists were making great strides within political and environmental treaties, industry was equally active in implanting an alternative concept known as *risk assessment* into international trade law (WTO and NAFTA) while throwing precaution to the winds.

In a lobby effort to scuttle efforts to place the Precautionary Principle into the text of the POPs (persistent organic pollutants) treaty, the Chemical Manufacturers Association has made their position clear. “CMA believes references to the ‘Precautionary Principle’ in the operative provisions of the instrument will not serve any productive purpose. As the US delegation is no doubt aware, the precautionary principle is subject to various interpretations, and may be used to justify politically motivated and discriminatory decisions that are not premised on sound scientific risk assessment.”<sup>24</sup>

“Risk Assessment”, often called a *risk based approach*, however has been criticized as morally,

and scientifically bankrupt. It first assumes that many of the new risks imposed on humans and ecosystems should be tolerated or simply mitigated, on the basis that they are the equivalent of unavoidable risks we take every day. In other words we should accept a small risk of getting cancer from a food additive as it is roughly the same risk we face from ingesting natural carcinogens, ultraviolet radiation from the sun, being hit by lightening, or even a car while crossing the street. On the basis of such comparisons, more and more new environmental risks are cumulatively justified, even though they might be completely unnecessary and avoidable. Those that play God with risk assessments in this way, blithely consider a few cancer deaths per million persons as a negligible concern because that risk might be equivalent to another risk we are face each day.

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*Even if one were to swallow the idea that certain risks, however unavoidable are acceptable, risk assessment really provides little clarity as to the scientific uncertainty of the risk being assessed.*

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ment, the results can vary by many magnitudes. For example, what risk assessment ever would have accounted for the PCBs now found in the breast milk of Inuit natives in the Arctic? In the case of the risk of cancer from the artificial sweetener saccharine, alternate risk assessments conducted in the early 1980s showed that saccharine could either cause 5,450 or 1,200 additional cancers per million persons ingesting saccharine. Then industry conducted its own risk assessment and predicted that it was really one cancer per billion persons. Thus, the variance between the highest and the lowest assessment was one million times and of course the lowest assessment was that assessment made by industry which stood to gain.<sup>25</sup>

Finally, risk assessment while being far from objective and conclusive, is a very expensive proj-

cess and would be unavailable to all but the wealthiest national governments to accomplish on a unilateral basis. Most countries and even local and state governments might feel compelled for lack of resources, to rely on weaker international standards to avoid trade rule challenges. Such international standards are established within arcane, obscure arenas such as the industry funded International Standardization Organization in Geneva or the Codex Alimentarius Commission in Rome where industry associations are known to dominate the decision making process.<sup>26</sup>

Despite the obvious fundamental flaws of risk assessment, the WTO (and NAFTA) have now codified risk assessment as being *the form of necessary "scientific" justification* for erecting environmental laws impacting trade, whereas the Precautionary Principle is deemed unscientific and unacceptable.

## The Beef Hormone Case: Grinding Good Sense and Democracy into Hamburger

**"There have been three totalitarian forces in our lifetime. The totalitarianism of fascism, communism and now capitalism. How can people try and tell us that we must import hormone-enhanced beef? What is that?"<sup>27</sup>**

— Mr. José Bové, French farmer and activist

The very recent case over artificial hormone use in beef products should send shock waves around the world to all concerned about matters of democracy and environment, and particularly to those of us concerned with public health. In the first dispute settlement decision interpreting an agreement known as the Sanitary and Phytosanitary Standards (SPS) Agreement, a Dispute Settlement Panel and later the Appellate Body ruled in favor of the United States and Canada, declaring that the European Union ban on beef treated with artificial growth hormones is illegal.

The EU ban is based on limited evidence that hormones used in meat production are likely to increase

various forms of cancer and may contribute to reductions in male fertility.<sup>28</sup> The U.S. government and industry have argued that hormones only cause cancers in hormone-sensitive tissues, e.g. female breasts and uterus by the activation of hormone "receptors" that are triggered only at a certain "threshold" below which no cancers will occur. Based on their risk assessments, the U.S. government believes they know where that threshold level lies. The U.S. claims it has established a regulatory process that prevents any farmer from exceeding the threshold level.<sup>29</sup>

In a report issued in late April, an EU scientific committee argued there in fact may be no safe threshold for sex hormones in beef because hormones may cause some human cancers by another mechanism — direct interference with DNA.<sup>30</sup> "If you assume no threshold, you should continually be taking steps to get down to lower levels, because no level is safe," says James Bridges, a toxicologist at the University of Surrey in Guilford, England.<sup>31</sup>

Despite the scientific debate, the U.S. and Canada maintained that the EU's health concerns were unproven and thus not supported by science. They asserted that as such they constituted a barrier to trade under the SPS, TBT (Technical Barriers to Trade) and the General Agreement on Trade and Tariffs (GATT). The EU countered that its ban was *precautionary* and that, to the extent that it was not based on scientific evidence, the Precautionary Principle, as a customary rule of international law, protected the right of the EU to maintain its ban.

The original dispute panel disagreed with the above argument citing the fact that the SPS specifically called for "risk assessments".<sup>32</sup> They also claimed that as a higher standard of protection, the EU measure is not based on an international standard established by the Codex Alimentarius Commission. Further the dispute panel ruled that GATT's article XX (b) exemption which might allow measures necessary in order to protect human, animal and plant life, was irrelevant because that exception does not apply to the more specific SPS agreement.<sup>33</sup>

The dispute panel ruling also upheld the notion that the burden of proof within a WTO challenge is on

the country *defending* its laws to protect health and the environment, rather than on the challenging country to prove that the trade is indeed safe. This means that while the WTO requires “scientific justification” for saying the beef hormones were *not* safe, the WTO does not likewise require “scientific justification” that they *are* safe. This appalling and unscientific bias is precisely what the Precautionary Principle seeks to overcome.

The WTO dispute settlement ruling, made by three trade lawyers meeting in secret, was largely upheld by the subsequent Appellate Body when the EU appealed its case. The appellate body being the final legal arbiter, the beef hormone decision is thus now an ugly landmark of WTO jurisprudence which is likely to have massive and widespread repercussions.<sup>34</sup>

The immediate real world result of this decision is that the democratic wishes of millions of Europeans who preferred not to be guinea pigs with respect to the effects of artificial hormones, has been denied. This democratic wish was illustrated dramatically by a 366-0 vote of the popularly elected European Parliament.<sup>35</sup> So far the EU has refused to abandon their import ban and thus the US and Canada have been given permission by the WTO to sanction, via 100% tariffs, European agricultural products to the tune of 125 million dollars each year.<sup>36</sup>

The longer term repercussions of the beef-hormone ruling have yet to be felt. The battle lines are clearly drawn and will likely come to a full-fledged trans-Atlantic war over the issue of genetically modified organisms (GMOs).

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***The immediate real world result of this decision is that the democratic wishes of millions of Europeans who preferred not to be guinea pigs with respect to the effects of artificial hormones, has been denied.***

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Already, industry is on a full offensive hoping to expand their influence from the risk based United States against a precautionary Europe.<sup>37</sup> In a letter written to the USTR’s office this year, the US Council on International Business wrote, “as you well know, U.S. trade has suffered substantially from trade restrictive measures by other countries which have based their actions on

unacceptable interpretations of the Precautionary Principle, as Europe has done in the beef hormone case. Similar challenges face U.S. business in trade of biotechnology products with Europe, in the Biosafety Protocol negotiations, and in European environmental labeling programs. These examples demonstrate all too clearly how interpretations of the Precautionary Principle which neglect scientific considerations can prevent legitimate trade in products whose risks can be identified and managed.”<sup>38</sup>

Meanwhile Europeans and a rapidly growing number of North Americans can be expected to fight very hard for precaution with respect to food safety. The rebellion already begun in France where farmers have not reacted kindly to the sanctions imposed by the WTO, by trashing and tormenting McDonald’s restaurants there, is but a small sign of much larger protests to come.<sup>39</sup> It is incumbent on all likewise concerned to remind our governments that we *also* don’t want to become part of a global chemistry experiment. We must join in solidarity with European activists and make the beef hormone case a banner for a public revolt in defense of the Precautionary Principle.

### III. WTO: Preventing Toxics Prevention

“I propose the worldwide development of a . . . program that would discourage and phase-out these older, inappropriate technologies and at the same time develop and disseminate a new generation of sophisticated and environmentally benign substitutes.”<sup>40</sup>

— Vice President Al Gore, in “Earth in the Balance”

In the last twenty years policy makers have asserted a toxic waste hierarchy with “prevention” at the top, various forms of recycling and re-use in the middle ranks, and disposal via land filling and incineration as the lowest, least desirable policy choice. While there are flaws in this model and disagreement about the environmental soundness and appropriateness of various waste disposal or recycling methods employed, (once the waste has been produced), nobody can disagree that the vastly preferable alternative is the apex of the hierarchy — reduction and minimization of hazardous wastes *via prevention*. Indeed, it is widely recognized, that the only really effective way to eliminate toxic pollution is accomplished not by trying to contain, mitigate, filter, or dilute it — but to eliminate it at source.

Whether called, Clean Production, Waste Minimization, Pollution Prevention, Source Reduction, these terms for the Prevention Principle all boil down to a central truth — *poisons in, poisons out*. What goes into producing a product largely dictates the nature of the wastes from it (both post-consumer wastes and industrial by-products) that we will have to face down the road and in our backyards. Thus the concept of *hazardous materials use reduction* is yet another keystone of the anti-pollution movement.

The struggle worldwide has thus been to move the attention of policy makers *upstream* in our manufacturing and product *design*, rather than continu-

ing to apply *end-of-pipe* techniques *downstream* in a futile effort to contain a problem already fully fledged. In policy terms this means in fact utilizing market and legislative forces *to phase-out and ban* hazardous inputs and methods while substituting safer alternatives.

We have already seen how a jettisoning of the Precautionary Principle makes bans and phase-outs extremely difficult to defend. But industry has not been satisfied with just throwing a barricade around the concept of precaution. They have simultaneously created an almost insurmountable WTO obstacle course to removing even the worst known killer substances (including lead, cadmium, asbestos, PCBs, DDT, and dioxin) from the planet.

bestos, PCBs, DDT, and dioxin) from the planet. Unless these WTO rules can be overturned, another pillar of the anti-toxics movement — toxics prevention, will be unattainable.

#### Banning Bans: The WEEE Case

This year, at the prodding of the American electronics industry, and armed with WTO rules, the United States Trade Representative’s (USTR) Office’s launched a pointed attack on European legislation which seeks to finally address upstream toxics issues by phasing-out toxic inputs and mandating safe recycling of non-toxic materials in electronic products. Without any public consultation, the Clinton Administration is now waging a war against the environment, indeed

against their own waste management policy hierarchy, by claiming that such preventative measures violate the WTO's trade agreements.

Europe disposes of 6 million tons of waste annually from electrical and electronic equipment such as computers and televisions.<sup>42</sup> Not only is such waste crowding landfills, but much of the materials contained in the waste are toxic. For example, the glass in cathode ray tubes in computer monitors is filled with mercury, cadmium, and phosphorus; lead is used in solders; and highly toxic, persistent, brominated flame retardants are injected into the plastic casings. Between 1997 and 2004, over 315 million computers will become obsolete in the USA. This adds up to a stunning 1.2 billion pounds of lead.<sup>43</sup> These materials are ecological time-bombs entering our air, and groundwater from landfills and incinerators.

In response to the problem, and as a result of many years of effort on the part of environmental organizations and progressive governments in Europe, the EU has drafted the Directive on Waste from Electrical and Electronic Equipment (WEEE). This legislation will phase-out the use of lead, cadmium, mercury, hexavalent chromium, and halogenated flame retardants by the year 2004. The directive also requires that manufacturers utilize at least 5% recycled plastic in their products and makes them responsible for the entire life cycle of the equipment including collection, recycling and disposal.<sup>44</sup>

In a rapid response, the American Electronics Association (AEA) which includes members such as Motorola, IBM, Intel and Microsoft attacked the proposed directive charging that the "proposal, if adopted in its current form, would cause the [European] Community to violate its interna-

tional trade law obligations."<sup>45</sup> This assertion is due to the fact that foreign companies wishing to export their products to the EU would be forced to comply with the EU rules. They claimed that the substance restrictions were in fact import bans and thus illegal according to the WTO's GATT prohibition of quantitative restrictions (Article XI) and

the "national treatment" (Article III) of the GATT.

*"While we share the goals of waste minimization and increased recycling, our industry is concerned with the means by which the European Commission proposes to attain those shared goals. For example, the draft directive prohibits the use of certain materials (such as a ban on lead) and mandates product design regulations (such as recycled content requirements)."*

— Letter by American Electronics Association to Vice President Al Gore. May 10, 1999<sup>46</sup>

(Technical Barriers to Trade) Agreement (Article 2.2) requires "least trade restrictive" measures. The AEA trade lawyers likewise opined that the directive's recycled content rule would be illegal for the very same reasons.<sup>46</sup>



*Obsolete and toxic electronic equipment and computers are creating a massive pollution problem. While Europe proposes legislation to phase out toxics in computers and require more recycling, US trade officials threaten the EU effort with WTO rules.*

## **WTO Threats to Pollution Prevention — Washington State**

In August of 1998, the Washington State Department of Ecology launched an initiative to eliminate persistent bioaccumulative pollution. The agency has held public meetings throughout the state and is drafting a plan for public comment.

Few would argue that the chemicals the Department of Ecology has targeted should continue to be dumped into our water and air. They are killer chemicals like dioxins and mercury which are known to be very dangerous in minute concentrations. They do not biodegrade readily or at all, and can be passed to the young before birth and in breast milk. Failure to ban these pollutants years ago has resulted in extensive contamination of human beings and wildlife. The Department of Ecology's action parallels elimination programs underway at the U.S. Environmental Protection Agency (EPA). Both the strongest of science and a fundamental commitment to not gambling with children's health has spurred the Department of Ecology to act.

But these state and federal efforts are on a collision course with policies of the World Trade Organization. Even as the Department of Ecology and EPA officials make announcements about finally ending persistent pollution, the US Trade Representative's office has joined with the electronics industry in attacking in Europe precisely the sorts of policies and programs under discussion here in our state.

The European initiative now under way requires that "Member States shall ensure that the use of lead, mercury, cadmium, hexavalent chromium and halogenated flame retardants is phased-out by January 2004" in electrical and electronic equipment. Industry and US trade representatives argue that this provision affects and unduly restricts trade (See WEEE case study).

The attempt to undermine the European initiative using WTO arguments, not only strongly threatens Washington State's ability to adopt such initiatives, as they can be similarly challenged by overseas governments, but it also denies Washington manufacturers a market for products made without persistent toxics. Electronics firms in Washington state that switch to safer alternatives will have no advantage in European markets as compared to those that continue to unnecessarily use and release deadly persistent toxics such as lead and mercury.

— Carol Dansereau, J.D., Washington Toxics Coalition

The AEA even challenged the assertion that the named hazardous substances, all well known to be priority pollutants, posed a threat to the environment, noting that WTO dispute panels would place a clear burden of proof on the country proposing the legislation to prove harm and necessity. They stated that even if the substances did pose a threat, imposing "an import ban" on foreign producers was illegal because the EU had no right to tell the United States how to protect its own environment. This

last argument ignores the fact that the products in question will be disposed of in Europe and in fact US manufacturers have a choice of either producing EU compliant computers or making all of their computers compliant with the higher environmental standards.<sup>47</sup>

The U.S. electronics industry lodged its protests with the EU itself and further implored the USTR to take up the case against Europe. The Clinton

Administration jumped at the chance. Rather than urging the industry to explore compliance with the higher standards and proposing similar smart legislation in the United States, USTR and the State Department, without public consultation, started an offensive on behalf of industry to weaken the European standard.<sup>48</sup>

In a U.S. State Department diplomatic letter, the US urged the EU to adopt the less-stringent U.S. standards. They further argued that since all of the costs cannot be readily passed onto consumers, the EU proposal would impose too great a cost to the electronics industry. It advised the EU to follow the US approach of "regulating rather than banning" hazardous substances and wastes.<sup>49</sup> It remains to be seen whether Europe will resist the full-court press by the United States and its electronics industry to sack this progressive environmental legislation.

## Supremacy over New POPs Treaty?

Even a multilateral attempt to phase-out the world's worst toxic substances on a multilateral basis may be under threat from the WTO. Early in the proceedings of the negotiations for a treaty on Persistent Organic Pollutants (POPs), Australia, expressed its concern that the treaty would be inconsistent with WTO agreements. Australia then insisted on inserting a supremacy clause into the text of the treaty at the Second Intergovernmental Negotiating Committee Meeting (INC-2) in Nairobi which, without naming the WTO, states, "The provisions of this Convention shall not affect the rights and obligations of any Party deriving from any existing international agreements."<sup>50</sup>

According to Claudia Saladin of the Center for International Environmental Law, "Inclusion of a supremacy clause in the POPs treaty, would likely operate to make international trade law automatically superior to the POPs Convention."

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*What is not said is that granting WTO supremacy over the treaty on persistent organic pollutants (POPs) could in fact make the entire exercise meaningless.*

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Privately, the Australian delegation told NGOs that they are adamant that the supremacy clause should remain until negotiations assure that *no trade bans* are included in the POPs convention.<sup>51</sup>

The United States based Chemical Manufacturers Association and the Chlorine Chemistry Council has likewise noted their concerns about the POPs treaty utilizing trade measures: "should the instrument [POPS Convention]

include any trade-related measures, it must clearly require all Parties to implement such measures in a manner that does not interfere with rights and obligations under international law."<sup>52</sup>



*Global climatic patterns of polar distillation has resulted in the unforeseen concentration of persistent organic pollutants (POPs) in arctic populations such as the Inuit. WTO rules may conflict with the United Nations' effort currently underway to eliminate POPs.*

What is not said is that granting WTO supremacy over the treaty on persistent organic pollutants (POPs) could in fact make the entire exercise meaningless. By use of similar arguments used against the “use bans” in the WEEE directive, where the US has claimed that “use bans” equate to “trade bans,” WTO supremacy over the POPs treaty could actually prevent that treaty from realizing its mandate — namely to take “measures which will reduce and/or eliminate...emissions and discharges of the twelve persistent organic pollutants...and, where appropriate, *eliminate production and subsequently the remaining use of* [emphasis added] those persistent organic pollutants...”<sup>53</sup>

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*To the WTO, paper is paper regardless of whether it is bleached with chlorine or not. Electricity is electricity whether it is produced by burning toxic waste or by employing solar power. Farm goods are farm goods whether or not they were produced by organic agriculture or chemically intensive agriculture.*

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To the WTO, paper is paper regardless of whether it is bleached with chlorine or not. Electricity is electricity whether it is produced by burning toxic waste or by employing solar power. Farm goods are farm goods whether or not they were produced by organic agriculture or chemically intensive agriculture. Shrimp are shrimp whether or not they are grown in chemically intensive aquaculture or caught in the wild. Clean clothes are clean clothes whether or not they are dry cleaned with carcinogenic solvents or wet-cleaned by steam. Any law which might make a distinction on the basis of PPMs can be challenged under the WTO as long as that law might impact profits made via trade.

## Preventing Choice Between Bad and Good Production Methods

Another assault on attempts at moving upstream to prevent pollution through product and manufacturing design are the WTO rules against “discriminating” on the basis of so-called Production and Processing Methods (PPMs). PPMs are defined as distinctions between products that are not based on their physical characteristics or end uses.<sup>54</sup> The most famous attack on distinctions made on the basis of PPMs was the ruling by the WTO dispute panel that the US had no right to ban imports of tuna caught by methods which were known to entrap and drown thousands of dolphins each year. To the WTO, a tuna is a tuna is a tuna. While to date this rule has mostly been devastating to labor and human rights cases (e.g. child labor as irrelevant), or in resource extraction (e.g. tuna), the implications with toxics issues are serious. In fact the widely accepted and vital use of Life Cycle Analyses (LCAs) as a tool to holistically examine a product’s entire life cycle, including the impacts from toxic inputs into production processes, has been thrown unceremoniously overboard.

## The Threat to Eco-Labeling

For years we have heard rhetoric from the business community that it is preferable to use “market based” approaches to sustainability rather than “command and control” (legislation) to achieve our goals. Yet industry is now using the WTO to deny the use of one of the more promising innovations for harnessing market forces in the pursuit of preventative, sustainable, clean, production — eco-labeling.

Both mandatory (legislated) and voluntary (private sector) eco-labeling are now under siege at the WTO. Industry charges that even voluntary labeling can be “trade distorting” as consumers are more likely to buy those products with a positive label. This argument which would presumably apply to all effective packaging promotions, would be laughable were it not being taken seriously by corporate lobbyists.

The primary front organization pushing to make eco-labeling illegal in the United States is known as the Coalition for Truth in Environmental Marketing Information which collectively boasts an annual sales of 900 billion dollars.<sup>55</sup> They have claimed that

labels such as “dolphin-safe tuna” (already killed by the WTO) create PPM distinctions which are forbidden by WTO rules. In 1996 there was heated debate within WTO Committees about eco-labeling with European Countries holding the position that eco-labeling should not be covered under WTO rules. The United States on the other hand, produced a position paper which was later discovered to have been written by the industry lobby (after an identical text copy was discovered bearing the letterhead of the Coalition’s law firm). Legal analysts agree that if the US position prevailed, both mandatory and voluntary eco-labeling would be devastated. That debate has so far ended in a stalemate<sup>56</sup>

Now however, it is very likely that the matter will come before the dispute settlement panels even before being sorted out in WTO Committees. This development will be due to the enormity and immediacy of what is at stake in the looming Waterloo between Europe and the United States over the issue of genetically modified organisms (GMOs). While Europeans are wishing to maintain a moratorium on the use of genetically modified foods, that line will be impossible to hold without mandatory labeling. Meanwhile, the United States, a country where GMO products are completely unregulated, is adamant about not letting the public know whether their food is natural or genetically modified. This position is being taken by the US government even as opinion polls show that 93% of Americans favor labeling to identify GMO products.<sup>57</sup>

## The Threat to Greening Government Procurement

Another innovative tool that might have proven extremely useful in promoting toxics prevention involves, taxpayers requiring that the governments they fund, use selective buying practices to contribute to sustainability. Not only do these rules help establish a greener marketplace, but they also help set a clear consumer example for the entire populace. The global government procurement market is estimated to be worth trillions of dollars annually.



*Both mandated and voluntary eco-labeling to help reduce pollution by promoting green consumerism may be interpreted by WTO rules as an illegal “non-tariff trade barrier.”*

For example, taxpayers could require via legislation or policies that all of the federal documents (a massive amount) be printed on post-consumer recycled paper that is 100% chlorine-free. They could require that 50% of all of the government’s energy consumption be from non-renewable sources. They could require that a preference be made for local goods to cut down on energy consuming transport.

They could do these things if the WTO’s 1994 Agreement on Government Procurement (AGP) did not require that the “national treatment” principle be in effect which prevents governments from favoring local goods and services. Further, the AGP demands that even when there are no national/local preferences, that governments are not allowed to take into account *any* factors (e.g. environmental) in awarding public contracts other than the ability of the company to fulfill the contract. It is uncertain how this rule will be interpreted when it comes to specific proposals. But the “chill effect” from fear of costly disputes is likely to deter innovation in this field.

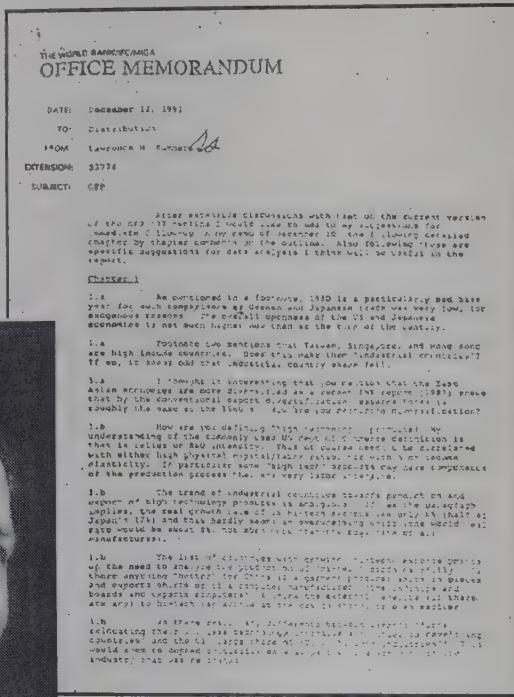
# IV. Free Trade in Toxic Waste: The Assault on Global Environmental Justice

*"I think the economic logic behind dumping a load of toxic waste in the lowest wage country is impeccable and we should face up to the fact that... underpopulated countries in Africa are vastly under-polluted."*

— Mr. Lawrence Summers

## The "Impeccable Logic" of Waste Trade

In 1991, the above statement was found in an internal World Bank memo.<sup>58</sup> It was signed with the same signature that will now be found on new US dollar bills. For the author was the Chief Economist of the World Bank, Mr. Lawrence Summers — now the US Treasury Sec-



*World Bank memo of Lawrence Summers (now US Treasury Secretary). This "all is the market" economic theology is perpetuated by WTO rules that enhance profits at the expense of human and ecological values. Indeed, WTO rules are in conflict with a global toxic waste dumping ban.*

retary, chief economist of the world's largest national economy.

When the memo was leaked to the world press, Mr. Summer's words created an outcry around the globe. Then Environment Minister of Brazil, Jose Lutzenberger found words for the collective outrage in his written rebuke to the Bank: "Your reasoning is perfectly logical but totally

insane...your thoughts [provide] a concrete example of the unbelievable alienation, reductionist thinking, social ruthlessness and the arrogant ignorance of many conventional 'economists' concerning the nature of the world we live in."<sup>59</sup>

If Mr. Summers is to be blamed, however, it would not be for dishonesty. His words were shocking for one simple, awful reason — with respect to traditional free market economic theory, they are true. As such, his words speak volumes about the failure of this model, for which the WTO is now the global engine, to serve as a form of governance over our lives. In this section we will explore how the global efforts to halt "toxic trade" even here in the United States is under real threat from the WTO.

## Banning Waste Colonialism

The economic logic of the export of hazardous wastes from the rich industrialized countries of the North to the poorer less-industrialized countries of the South had already become horribly clear to the global community even before Mr. Summers wrote his infamous memo. Beginning in 1987 headlines began appearing around the globe, announcing discoveries of barrels of mixed-industrial poisons dumped on Caribbean and African beaches, and vessels laden with toxic trash plying the coastlines of southern islands and continents searching for a port-of-call. These first "ships of death" were highly publicized harbingers of an extremely profitable trade that would have become a global epidemic had it not been for a most remarkable, timely, concerted global response.

Instead, in a worldwide mobilization of legislation between the years of 1986 and 1996, the global community voted a resounding NO to a free trade in hazardous wastes. First, by force of numerous countries' unilateral legislation, and then via a spate of regional treaties including the regions of the 69 countries of the African, Caribbean and Pacific (ACP) Group (Lomé IV Convention, Article 39, 1989) Africa (Bamako Convention, 1991), Central America (Central American Accord, 1992), the Mediterranean area (Izmir Protocol of the Barcelona Convention, 1996) and the South Pacific (Waigani Convention, 1995), over 100 countries have moved to ban the import of hazardous wastes into their territory.<sup>60</sup>

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*The Basel Ban Amendment, has been hailed as a landmark achievement both for global environmental justice. But most legal analyses conclude that the Basel Convention itself and the Basel Ban Amendment are in conflict with the WTO rules.*

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Then in 1995, 83 Parties to the United Nations Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal (The Basel Convention) made an historic consensus decision to establish an amendment to that treaty to globally ban the export of all hazardous wastes from the rich, industrialized member countries of the Organization of Economic Cooperation and Development (OECD) to non-OECD countries. The ban included hazardous wastes bound for recycling destinations as increasingly toxic waste exports were being designated as recyclables and recycling operations in developing countries were discovered to be either "sham recycling" or very polluting. While carrying great moral weight, the ban will not enter the force of law until 62 countries have ratified it. To date, while 26 countries have implemented the ban, 16 countries have ratified it.<sup>61</sup>



*Are these children in "vastly under-polluted Africa" worth less than American children? Free trade in toxic waste says they are.*

## The Threat to the Toxic Waste Trade Ban

The Basel Ban Amendment, has been hailed as a landmark achievement both for global environmental justice. Once in force, it will serve as a solid bulwark of international law for sustainable, regulated trade. But most legal analyses conclude that the Basel Convention itself and the Basel Ban Amendment are in conflict with the WTO rules and are thus illegal unless a general exception (via Article XX) to those rules is granted. This is primarily due to three measures taken by the Basel Convention and the Basel Ban Amendment:

- The Basel Convention prohibits trade between Parties (members) and non-Parties;<sup>62</sup>
- The Basel Convention expressly guarantees the right of countries to ban the import of hazardous wastes;<sup>63</sup> and
- The Basel Ban Amendment prohibits trade between OECD countries and non-OECD countries.<sup>64</sup>

## In Defense of Unilateral Action

The WTO rules place a heavy, discriminatory hand on countries that wish to take unilateral measures to enhance the global environment. While WTO proponents are quick to call “foul” and “discrimination” when a national law discriminates against trade, there is no similar call of “foul” for countries that discriminate against the environment by their absence of laws to protect it.

In fact, countries that stride beyond the abysmal, failing, global norm of environmental protection to enact progressive legislation to defend the earth should be rewarded, not punished. By stripping away possibilities for unilateral action with charges such as “discrimination,” the WTO strips away global environmental leadership and a vital proving ground for innovation and courage to face our collective crisis.

Virtually every significant global reform for any concern starts with unilateral actions. In the case of the toxic waste trade bans, there would never have been a global agreement to ban OECD to non-OECD waste trade within the Basel Convention had not progressive countries (both developed and developing) paved the way by their own national, unilateral initiatives. Rather, national bans led to regional bans which in turn led to a global agreement.

Likewise, the push for a global ban on DDT and PCBs under the upcoming POPs treaty is imminently possible due to the fact that so many nations have already taken the step and banned the substances domestically. Without such a follow-the-leader process, multilateral environmental agreements (MEAs) tend to reflect the lowest common denominator and actually can be counter productive in institutionalizing low levels of protection.

This fact must be born in mind by environmentalists all too willing to accept WTO rules as long as multilateral environmental agreements (MEAs) are left untouched. The relatively new idea that everything to enhance the global environment must be accomplished on a multilateral basis all for the sake of more and more trade harmonization spells disaster for our planet. Such a plan, simply passes global leadership from nation states to transnational corporations. Transnational corporations can not be counted on to show the global leadership necessary to save the earth. By the time they realize that such an endeavor is in their own interests it will be far, far too late.

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*By stripping away possibilities for unilateral action with charges such as “discrimination,” the WTO strips away global environmental leadership and a vital proving ground for innovation and courage to face our collective crisis.*

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Toxic waste which can be recycled can possibly be considered a “product” by the General Agreement on Trade and Tariffs (GATT). If it is not considered a product then legal analysts agree that the commerce in waste disposal is certainly considered a “service” and will fall under the Gen-

eral Agreement on Trade in Services (GATS) with virtually identical principles as those of GATT.<sup>65</sup> Thus the scope of the Basel Convention and the WTO do indeed overlap, subjecting the Basel Convention and Ban to the following conflicting WTO rules:

**Principle of No Quantitative Restrictions:** (GATT Article XI) requires member countries not to employ prohibitions or restrictions other than duties, taxes, or other charges on the importation of any product from another member country or on the exportation or sale for export of any product destined for the territory of another member country. *In effect, export and import bans are prohibited.* Even the prior informed consent (PIC) paperwork requirements embodied in the original Basel Convention can be considered a quantitative restriction.<sup>66</sup>

- **Most Favored Nation Treatment:** (GATT, Article I) requires that

WTO members treat “like products” from another WTO member as favorably as it does from any other member. As the Basel Convention itself (ie. Parties to non-Parties) and the Basel Ban (ie. from OECD to non-OECD countries) prohibits hazardous waste trade with some countries but allows it with others, these obligations clearly violate this WTO principle.<sup>67</sup>

- **National Treatment Principle:** (GATT, Article III) requires all members to treat “like products” or “services” of member nations as favorably as it treats its own domestic products or services. This fundamental principle of GATT seems to directly contradict a fundamental principle of Basel — that of self-sufficiency in hazardous waste management.<sup>68</sup> For example, as a non-OECD country will have to deal with its own domestic hazardous waste via domestic services, a foreign country might easily challenge the ban and demand equal access (export to) the same service. Moreover, the assertion of the National Treatment Principle would assure that no country will be able to have a national import ban, a right which is exercised in practice by over 100 countries and has been guaranteed under the Basel Convention.<sup>69</sup>

## Article XX To the Rescue?

Having established that almost assuredly a dispute panel would find Basel in conflict with the WTO, the question then arises as to whether this landmark agreement can be saved by Article XX GATT general exceptions and/or the fact that Basel was achieved on a multilateral basis. Article XX allegedly allows countries to derogate from WTO rules whenever measures are required “necessary to protect human, animal or plant life or health” or “relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.”

The chapeau (or pre-statement) over these exemptions

requires that the measures must be “applied in a manner which would not constitute a means of arbitrary or unjustifiable discrimination” or a “disguised restriction on international trade.”

Already, however, the case law with respect to the general exceptions in the dispute panels already heard, indicates that only a very narrow interpretation of the word “necessary” and a very broad interpretation of the words found in the chapeau are considered by WTO dispute panels. The “necessity test” has been interpreted to mean that the defendant’s measure must exhaust all alternatives that might be “least trade-restrictive,” and that “proportionality” or balance must exist between the environmental concern and the trade barrier.<sup>70</sup> Further, the chapeau has been interpreted in a way that virtually undercuts the entire exemption. To date, Article XX has never been successfully used by any country trying to defend an environmental law from the WTO.<sup>71</sup>

## MEAs v. The WTO

On the other hand, as the Basel Convention is a multilateral environmental agreement (MEA) concluded now by 130 parties, considerable weight might be given to the fact that the agreement is open to all

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*“The recent claims by the WTO that they are somehow a champion of developing countries, because they don’t discriminate make us want to shriek. We in the South want the world to discriminate, as any sane person would, between sustainable trade and toxic trade, between what is right and what is wrong.”*

— Ravi Agarwal, BAN in India

## Bhopal Remembered

The last day of the 3rd WTO Ministerial Meeting in Seattle will mark the fifteenth anniversary of the Bhopal disaster. On December 3, 1984, Union Carbide Corporation's pesticide factory accidentally leaked poisonous gases into the city of Bhopal, India. In one night of chemical terror over three thousand residents were killed and hundreds of thousands of others were injured, many of them permanently. Bhopal has been called the "Hiroshima of the Chemical Industry", the worst commercial industrial disaster in history.

In the last fifteen years since the chemical incident, there have been few positive changes in Bhopal. Union Carbide's pesticide factory remains abandoned and contaminated, leaking toxic chemicals into the nearby slum. In its 1989 annual report, Union Carbide told its shareholders that the Bhopal gas leak had cost them 43 cents per share. The horrible suffering of over half million people was thereby reduced to 43 cents per share. For the survivors of the Bhopal disaster, the toxic nightmare has continued unabated. At least sixteen thousand people have died so far from injuries related to their toxic chemical exposure fifteen years ago. 550,000 people have injury claims before the compensation courts set up in Bhopal. Of the claims processed so far, 90% of the claimants have received only \$400 for their personal injuries, which is barely enough to cover medications for five years.

Despite an extradition order pending since March, 1992, the Indian government, which issued the extradition order, has made no moves to bring former Union Carbide CEO Warren Anderson to trial. Instead, the government is courting chemical companies to expand their manufacturing capacity in India, as well as allowing them to introduce genetically engineered crops to replace traditional farming practices. For Union Carbide and the Indian government, the Bhopal incident means little more than a public relations fiasco that is finally fading from the public's memory. With the recent merger of Union Carbide and Dow Chemical, even the name of Union Carbide will soon disappear.

But the significance of the disaster extends well beyond Bhopal or Union Carbide. Other examples of this corporate philosophy abound. The DuPont Corporation continued producing chlorofluorocarbons throughout the 1980s even though research in the mid-1970s showed these chemicals destroyed the ozone layer and would lead to millions of skin cancers. Today, malignant melanoma is one of the fastest growing cancers worldwide. The Johns Manville

countries to enter, its agreements were deemed "necessary" by substantial numbers and is therefore unlikely to be considered a disguised, "protectionist" trade barrier. While there has yet to be a WTO challenge of any MEA, even while several such agreements utilize trade measures to protect the environment, it is generally thought that there will be considerable reluctance among most governments to pit

one treaty against another via the WTO dispute settlement process. While there has been considerable speculation, there exists no real consensus among legal scholars as to what would actually happen were an MEA to be challenged in the WTO dispute settlement process, nor what form an alternative process of resolving the conflict would entail.



*Woman tries to assist man blinded in the night of 3 December 1984, the date of the Union Carbide Chemical disaster in Bhopal India. WTO liberalization of trade and investment rules will make it increasingly difficult to prevent future Bhopals.*

an increasingly skeptical world that the WTO is becoming more transparent and sensitive to environmental and social concerns while in fact desperately clinging to the fundamentally destructive core principles of unbridled free trade.

It is imperative therefore that long after the meeting is over and the rhetoric unleashed, that Bhopal must continue to sound a siren for us. Bhopal is not only a symbol of the technological failures and corporate abuses of the twentieth century, but a powerful warning sign for the twenty-first. Are we willing to continue to enjoy the commodities of the global market at the expense of species extinction, poisoned children and ecological destruction of epic proportions? Are we willing to sacrifice our own genetic heritage and the genetic diversity of the planet, so that a few powerful corporations can become wealthier than most of the world's nations? Bhopal calls us to mourn for the dead, but it also challenges us to fight for the living. It calls us to resist an economic model that values only monetary enrichment and replace it with one that values those things that can not be quantified. With a commitment to spiritual and political resistance, Bhopal can be our beacon of hope.

— Gary Cohen, Health Care Without Harm

## Industry's WTO/Basel Game Plan

The very real possibility of a successful WTO challenge, at least to succeed in weakening the Basel provisions via a negotiated compromise has not escaped the attention of the many enemies of the waste trade prohibitions. Despite being endorsed so far by over 100 countries, the Basel Ban has stirred a powerful

Corporation continued producing asbestos even when research showed that asbestos was killing its workers.

In the latter days of the twentieth century, global corporations have emerged as major agents of indifference and destruction. As revealed in this report, through a narrow economic logic the WTO well serves those that would increase consumption and maximize profit by externalizing costs and globalizing pollution to the time and extent possible.

Thus it is fitting that the Bhopal anniversary will come during on the last day of the 3rd Ministerial WTO meeting. This will no doubt be the very day when WTO spin-doctors will try to make the case to

backlash among free-trade hard liners and industries that would profit enormously by the resumption of exports of their hazardous waste in avoidance of costly hazardous waste disposal at home. While European countries have now implemented the ban, Australia, Japan, Canada and the United States, on behalf of their industries, have decided to fight it. It is largely due to their objection to the Basel Ban that the United

States is so far the only industrialized country that has failed to ratify the Basel Convention.

Certainly industry, which to date has dictated the US policy vis a vis Basel, is very interested in a WTO challenge of Basel and has already laid out a game plan. After the European Union ratified and implemented the Basel Ban the International Chamber of Commerce (ICC) stated, "the EU has unilaterally taken a major step by banning shipments prior to ratification of the pending ban amendment. The legality of this action under WTO rules must be questioned."<sup>72</sup>

In a paper prepared for the International Council on Metals and the Environment (ICME) a metallurgical industry association, three options were laid out for attacking the Basel Ban. One of them was a challenge before the WTO: "As the proposed export ban is considered GATT-inconsistent and its application in the Basel Convention is not saved by Article XX, strictly speaking it would be easier for developing countries affected negatively by the export ban to resort to the WTO framework to seek redress." They further argue that "it may be best not to raise a challenge against the entire Basel Convention, but to limit it to specific

provisions within the Convention," and go on to note that "it takes only one Party to raise a challenge before the GATT/WTO," and note that if the Party wins, "its challenge is guaranteed to become binding on all parties."<sup>73</sup> In other words, why not try?

Activists in developing countries are horrified by the WTO threat to the Basel Convention and its clear stand for environmental justice. "The recent claims by the WTO that they are somehow a champion of developing countries, because they don't discriminate make us want to shriek" said Ravi Agarwal of the Basel Action Network in India. "We in the South want the world to discriminate, as any sane person

would, between sustainable trade and toxic trade, between what is right and what is wrong. The lawless trade promoted by the helps those companies that want to get rich from poisoning the poor. The Basel Ban Amendment says no to this.

It says there are certain types of trade that we will not tolerate. And the WTO simply responds — sorry."

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*"It doesn't matter if it's from Tukwila, Toledo or Taiwan...there's nothing that prevents U.S. companies from importing waste...since there is no difference between foreign waste and domestic waste,"*

— Bill Dunbar, EPA Region X

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Basel Action Network

*Cambodian girls walking through toxic waste dumped there by Taiwanese chemical giant Formosa Plastics. Cambodia has since banned imports of toxic waste. However such import bans (now in place in more than 100 countries) are considered illegal under WTO rules.*

## The Threat to National Waste Import Controls: The Formosa Plastics Case

*"It's practically an American tradition: waste has long been dumped on the cheapest, least desirable land in areas surrounded by less fortunate citizens."*<sup>74</sup>

— Vice President Al Gore,  
from Earth in the Balance.

In December of 1998, the world was once again rocked by an international waste dumping scandal that rivaled those of the late 1980s. The incident provides new lessons on how the WTO rules could impact a national government's attempts to regulate this form of dirty trade.

The world's largest manufacturer of PVC Plastic — Taiwan based transnational Formosa Plastics

Group (FPG), hired a broker to rid the company of some 3,000 tonnes of mercury contaminated residues that had been taking up space on the factory property for over 20 years. The broker shipped it off in the night to the war-torn impoverished country of Cambodia where it was dumped in the countryside near the port town of Sihanoukville. They might have hoped the dumping scheme would have remained quiet, but a dockworker that unloaded the waste and a villager that slept on the container sacks both died soon after exhibiting identical symptoms of acute mercury poisoning. Following these deaths there was a mass riot in Sihanoukville and a panicked exodus of the town left 5 more dead.<sup>75</sup> Neither Cambodia nor Taiwan are Parties to the Basel Convention and Cambodia possessed no law banning waste imports.

Since that time Cambodia has moved to pass a law banning importation of hazardous wastes of all kinds.<sup>76</sup> But under WTO rules when and if Cambodia joins the WTO (currently they are an observer country), other WTO member countries could challenge Cambodia's right to ban toxic waste imports, exported from their countries under the "National Treatment" and "Quantitative Restrictions" rules once again making that country vulnerable to toxic dumping schemes.

The FPG dumping case has also revealed that by following WTO rules, even the United States public may be left helpless in restricting waste flows into its own territory. Following the scandal, FPG tried unsuccessfully to ship the toxic waste to landfills in California, Nevada, Texas and Idaho. The first place FPG wanted to send their waste was to a site near a low-income Latino community near the Mexican border — turning an international environmental justice story into a national one.

A coalition of environmental, justice, and labor groups opposed allowing FPG to avoid its responsibility to manage its own waste at source and in-

stead ship it to American communities.<sup>77</sup> As Jane Williams of California Communities Against Toxics put it, "we have worked hard to reduce our own toxic waste generation in this country, so now we finally see the fruits of our labors in less waste being dumped or burned in our communities. There's no way that we are now going to roll over and allow this country to become the pay toilet for the rest of the world. Rather than importing toxic waste we should be exporting waste minimization technologies." — Jane Williams, California Communities Against Toxics

nologies."

Even local politicians that consider themselves "free-traders" were horrified by the prospect of Asian wastes flowing unimpeded into their communities. In a letter of concern about the FPG waste import proposal to EPA Administrator Carol Browner, US Senator Diane Feinstein of California said, "Foreign waste requires a level of scrutiny equal to, if not higher than that of domestically generated waste...I strongly urge you to work with international organizations to ensure that all regions of the world are developing their own capacity for appropriate treatment or storage of wastes."<sup>78</sup>

In a similar letter to Browner, US Congressman Jim McDermott of Washington State stated, "If this proposal is allowed to proceed in Washington and Idaho, it will set a precedent that could lead to the routine shipment of toxic and hazardous waste as a commodity at the whim of global market fluctuations. There are tremendous international energy, health and safety consequences of this practice. It would be irresponsible for the EPA to open this door without serious investigation of the potential environmental and social impacts."<sup>79</sup>

And US Senator Patty Murray of Washington State shared this view, stating, "we do not want to encourage the shipment of waste from Taiwan in the future, since that country should be incorporating available technology to reduce toxic waste at its source."<sup>80</sup>

## Seattle's Exports of Cancer to Asia

According to the World Health Organization (WHO), in the next 25 years tobacco related disease is expected to kill on average about 8.4 million people annually. That is more than 3 and ½ times as many people as it kills today.<sup>85</sup> This increase will be due to the expansion of the tobacco market to developing countries, and in particular in Asia.



*Seattle is a major pass-through port for US tobacco products for Asia. While the United States legal system cracks down on the marketing of cancer, the United States Trade Representative office has helped Tobacco companies eager to exploit non-smoking populations such as Asian women.*

A 1991 World Bank report, noted, "given the projected decline in developed country consumption, the multinational tobacco companies have publicly targeted the developing world as their major market focus, and their penetration of developing country markets has been accompanied by very large increases in smoking prevalence, usually among people in their teens and twenties."<sup>86</sup> WHO figures show that tobacco consumption increased 15 percent between 1988 and 1992 and is projected to increase 33 percent between 1991 and 2000. According to one epidemiologist, if current trends continue, 50 million of the children and teenagers alive in China today will eventually die from smoking related disease.<sup>87</sup>

Surprisingly, Seattle serves as a major pass-through port for tobacco products from the Southern USA on their way to Asia. Tobacco products ranked an astonishing 5th place in total export value in Washington State in 1997.<sup>88</sup>

The path of much of the tobacco, and thus cancer, that finds its way through Seattle/Tacoma docks to Asia was greased by the United States Trade Representatives (USTR) office on behalf of the tobacco industry over the objections of Asian governments. In 1985, USTR began using trade sanction threats based on GATT (one of WTO's agreements) principles of non-discrimination to pry open cigarette markets in Japan, South Korea, Taiwan and Thailand. Japan at the time had high tariffs and discriminatory distribution which kept American brands out. South Korea had a law forbidding sales of foreign cigarettes, and Taiwan and Thailand also prohibited foreign cigarette imports. All of these governments justified their restrictions for public health reasons, while continuing to manufacture cigarettes domestically in state run monopolies.<sup>89</sup>

USTR declared the public health issue to be disguised protectionism. What they failed to consider was that while there was clearly a case to be made that these trade barriers were discriminatory, the health issue from American imports was also a serious and urgent issue. In reality, the quality of the Asian cigarettes was very poor, the cost was quite high, and due to little advertising, the public consumption rate was relatively low. This was all to change soon.

*"China is being told by the most active anti-smoking country in the world that they must take the poisons in the name of free trade. You get health authorities in the United States saying this is bad, and trade authorities in the United States saying China must accept our cigarettes,"*

— Dr. Roderick Gee, WHO in China

Japan was the first USTR target, and after one year of threatened trade sanctions, Japan relented in 1986 and opened the door to American cigarettes imports. Now in Japan female smoking is at an all time high. It took only a few weeks to force Taiwan to capitulate to a free trade in American cigarettes. In 1988 South Korea finally relented to open its doors to American brands, even overturning their cigarette advertisement ban. Thailand appealed their case to the WTO in 1990 and the WTO dispute panel concluded that the

discrimination by Thailand could not be justified as "necessary to protect human, animal or plant life or health" Consequently, Thailand had to open its market for foreign cigarettes.<sup>90</sup>

The holy grail for the tobacco industry is known to be China. With 1.2 billion persons, many of them non-smoking women, China is the largest global cigarette market. The tobacco barons are lobbying frantically for China's entry into the WTO. With China in the WTO it will be very difficult for that country to hold a line against an invasion of American cigarettes and the accompanying promotion campaign. Already in China the number of smokers is increasing by 3 million persons each year and smoking deaths are expected to soar to 2 million persons each year by 2025.<sup>91</sup>

"This is a very big threat," says Dr. Roderick Gee, representative of the WHO in China. "China is realizing now that despite the money which comes from tobacco sales, the costs of treating the illnesses associated with tobacco may not be worth it. But China is being told by the most active anti-smoking country in the world that they must take the poisons in the name of free trade. You get health authorities in the United States saying this is bad, and trade authorities in the United States saying China must accept our cigarettes," Gee said.<sup>92</sup>

However when the coalition asked the US EPA to halt the import in order to uphold the principles of waste reduction and waste trade minimization,<sup>81</sup> the EPA admitted that there was nothing in US law, nor was there anything envisaged for future US law (when the US ratifies the Basel Convention) that will allow the United States to oppose or restrict imports of toxic waste.<sup>82</sup> According to EPA spokesperson Bill Dunbar, "It doesn't matter if it's from Tukwila, Toledo or Taiwan...there's nothing that prevents U.S. companies from importing waste...since there is no difference between foreign waste and domestic waste," he said.<sup>83</sup> In the end, it was a stand taking by the Longshoreman's Union at the bequest

of the environmental groups that prevented the wastes from being dumped in the United States, not the government.<sup>84</sup>

It is no accident that the Clinton Administration has so far refused to allow any restrictions on hazardous waste imports. They also still refuse to ratify the Basel Ban Amendment and are known to be working to overturn the US existent ban on the import of PCB wastes. These US policies are entirely consistent with the new WTO theology of free trade — free trade not only in "goods" but even for those things which might better be called "bads" — those things which we are trying to eliminate from the earth.

# V. Conclusion: To Trade or Not to Trade — That is NOT the Question

Too often, those that question unbridled “free trade” are somehow thought to be opposed to trade itself. But trade is a valuable, fundamental and traditional activity of our species. But even a child understands that trade must be fair and accomplished within a set of rules and limits that ensure that it does not hurt things we care for most — our environment, our families, our communities. As we have learned in recent years, without sufficient regulation and safeguards, trade can unravel ecosystems, social fabric, and local economies that support communities and species around the world.

The WTO rules have falsely pretended that trade is neutral with respect to the environment. But trade is not neutral, rather it can have negative or positive effects depending on how the rules are written, who they are written by and for. The purported advantage of trade is that it allows specialization and increased economic efficiency. Yet these “gains from trade,” can only be secured if *all* of the costs, including those from damage done to the environment, of producing products are either eliminated or included in the price of the product. Gains from trade cannot be realized if costs are “externalized” or dumped on communities and the environment.

If costs are externalized, then the economy is false and inefficient. Economists call this a “market failure.” Fixing a market failure requires intervention and regulation to internalize or otherwise eliminate these costs. But we find that the WTO rules have not only allowed large cor-

porations to externalize their costs, but they have diligently and purposefully created rules which forbid governments from creating mechanisms to ensure cost internalization, and thus true economic integrity.

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*WTO rules have not only allowed large corporations to externalize their costs, but they have diligently and purposefully created rules which forbid governments from creating mechanisms to ensure cost internalization, and thus true economic integrity.*

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fully designed to restrain the known excesses of unbridled free trade. We can see by just the few examples in this report that the WTO has become an engine for what could become a massive global deregulation without representation — a new level of corporate tyranny.

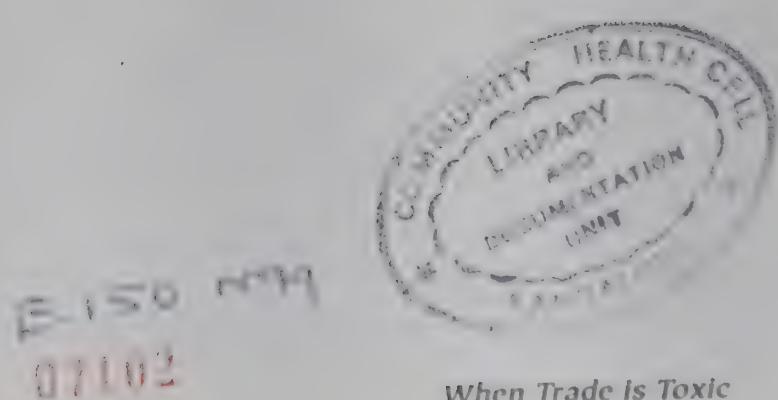
For anti-toxics, public health, and environmental justice activists, the WTO threatens to topple the pillars of our movement and its work to make the world a safer place for all.

- ✗ The WTO discards the fundamental Precautionary Principle which asserts that a scientific fog does not justify flying blindly ahead, placing the burden of proof on those wishing to move forward to assure that we are not on a collision course.
- ✗ The WTO prevents us from moving forward with the Prevention Principle and keeps us from practicing what all toxics policy analysts know is the most important strategy — minimizing and reducing pollution at source rather than finding new hiding places for it.

- Finally, we have explored how the WTO threatens restraints we might place on externalizing costs to the poorest communities on the earth — in defense of global environmental justice. It threatens our efforts to stem the tide of trade in toxic wastes, toxic products or toxic technologies.

These principles embody the fundament of our movement and must be preserved if we are to achieve our dream of a toxics-free future. Given this threat we must resolve to move beyond acting solely locally, but must simultaneously learn to become active in the rarified air of global politics, and the national policies that shape them. Where we have no access to these cloisters of bureaucrats we must relentlessly insist on active representation inside.

From November 30th to December 3rd, the obscure, unaccountable institution of the WTO will be coming to Seattle. For many of us it will be venturing into our backyard just at the time when its weighty influence on all of our efforts is being felt and recognized. We must use this opportunity of the Seattle Ministerial meeting to recall that trade does not have to be done in this way — that the WTO is an errant trade model thrust forward by the few to take advantage of the many. We must remind ourselves that trade is an ancient tradition of all peoples. It is time to wrest back the control over the conduct of trade. Let us ensure that the Seattle Ministerial is that turning point — the moment in history in which we the peoples of the earth on behalf of all species on the earth, reject the WTO model and take the age-old concept of trade back into our hands.



## An Activists Dictionary for Translating WTO-speak (Orwellian to English)

**Agreement on Government Procurement (AGP)** — Agreement that prohibits taxpayers from specifying how they want their tax money to be spent (ie. on sustainable, equitable products).

**Agreement on Sanitary and Phytosanitary Standards (SPS)** — An international treaty that sounds hopelessly esoteric but only happens to govern the integrity of all of the food that we eat and the risk from all of the diseases we might contract! Within it there lies numerous prohibitions against trade restraints, including a concerted undermining of the Precautionary Principle thus allowing chemical pollution and diseases to enter our food and agriculture products.

**Dispute Resolution** — Under the WTO, any country can challenge a national law by running to the WTO dispute panel. This panel usually consists of three trade lawyers which deliberate in secret without participation from stakeholder groups unless it is requested. The decision of the three is binding and can overturn laws decided democratically by many millions of citizens.

**Fair Trade** — A term for alternative trading rules which might make distinctions that favor responsible and sustainable trade over that which is not.

**Fast Track** — Globalization without representation. A means by which the US government can vastly limit debate, congressional hearings, and the possibility of amendments on international trade agreements and allow congress only a thumbs up or down on the entire package.

**Free Trade** — Lawless Trade

**GATT** — The General Agreement on Trade and Tariffs. The tumor that on January 1, 1995 metastasized into the cancer that is the WTO.

**Globalization** — A global economic model where unbridled capitalism, free trade, and the rights of transnational corporations are given value over democracy, sovereignty, human rights and sustainability.

**Harmonization** — A euphonious word for one set of rules. In practice it is another word for “downward-harmonization,” as the deck is stacked against any dreams of upward harmonization due to corporate dominance within the rulemaking institutions, the consensus nature of international law, and the unwillingness of developed countries to assist developing countries in leapfrogging over dirty development.

**MEAs** — Multilateral Environmental Agreements. These are international treaties that free traders feel the WTO should be able to trump even though they have equal standing in international law. Now there are efforts underway to insert “supremacy clauses” into new MEAs (e.g. POPs treaty) to ensure that WTO has precedence over the MEA. Yet other free traders want to set a limit that only via MEAs can environmental standards and rules be set — not allowing local, national or regional agreements. Both of these ideas spell disaster.

**Most Favored Nation Treatment** — All countries must be treated equally no matter how much they destroy the global environment, abuse workers or human rights, and no matter how little economic and political clout they might have to resist unfair investment or trade, or compete with larger countries. (See non-discrimination)

**Multilateral Agreement on Investments (MAI)** — A liberalization agreement dealing with investment rather than goods and services. It would grants rights to capitalists which will dramatically diminish the ability of governments to decide the types of foreign investment allowed in their countries and the terms of entry and operation. This agreement proposed by the Organization of Economic Cooperation and Development (OECD) — the club of 29 most wealthy countries, was put on hold by an outcry organized by a globalized activist movement. NAFTA already includes many investment provisions that have been proposed under the MAI.

**NAFTA** — North American Free Trade Agreement which established WTO and MAI like provisions within a trade agreement for Canada, Mexico, and the United States.

**National Treatment** — All foreign business must be treated just like homegrown businesses regardless of environmental, labor, or social practices of the importing country and regardless of the need to protect a local economy from foreign investments, imports or trade in problematic substances such as toxic waste, or cigarettes.

**Non-Discrimination** — A term that is in itself used with great discrimination to allude only to discrimination against a country’s right to trade, and not for example its right to protect its environment or the global commons. Indeed the WTO seems to take pride in the fact that it cannot distinguish between sustainable, responsible trade and non-sustainable, irresponsible trade — clearly a lack of a discriminating mind. This term is used as an excuse to lower environmental and social standards to lowest common denominator levels.

**PPMs (Production and Process Measures)** — How things are made, farmed, caught or processed (e.g. with pollution or not, with child labor or not) deemed irrelevant by WTO rules.

**Proportionality** — The idea that an environmental or social measure taken by a government must not impact trade to an extent that is not in proportion to the environmental problem involved. In other words, environment or social issues can never be considered more important than trade.

**Protectionism** — A pejorative term for “protection” (the true noun form of “protect”), implies that economic, social and environmental protections are motivated by selfish interests.

**Quantitative Restrictions** — Bans or limits on trade in substances or products. The WTO disallows “quantitative restrictions,” even when the ban or limitation protects the environment or public health.”

**Technical Barriers to Trade (TBT)** — Lets get technical! What they are really talking about is laws — your laws, my laws, our laws. Also an agreement (TBT Agreement) under the WTO that seeks to eliminate TBTs.

**Trade Barriers** — Anything that can limit profits made via trade or investment.

**Trade Distortion** — Used to describe the effects of “trade barriers.” Not used to describe the effects of allowing “distortions” in true economics via externalizing true costs to communities and the environment.

**Trade Liberalization** — Freedom to allow transnational corporations and governments to externalize environmental and social costs to the planet, and its people (see free trade).

**Trade Wars** — According to the WTO these are what happens when countries retaliate against tariffs. They are *not* what happens when the WTO allows countries to sanction one another if they fail to overturn democratic decision-making (as is currently taking place between Europe and the US over the beef hormone issue).

**TRIPS (Trade Related Intellectual Property Rights)** — The subject of a WTO agreement which requires that the whole world adopt US style patent laws. Can be used to strip traditional peoples’ ownership of rights to their own seeds, recipes, methods and genetic material. Can be used to deny developing countries appropriate technologies (e.g waste minimization technologies). The Agreement on TRIPs proves that the WTO is not primarily about “free trade,” as the Agreement actually legislates *against* free trade. Rather the WTO is about giving transnational corporations what they want.

**WTO** — An umbrella organization designed to limit governmental regulation of trade and investment to one set of rules. But because these rules have been created primarily by the largest of our corporations, these rules have been established primarily for these corporations. They have become a Corporate Global Constitution and “Bill of Rights,” that denies rights to people and the environment.

## Notes

1. GATT Article XX allegedly allows countries to derogate from GATT in such cases where it is "deemed necessary" in order to protect human health and animal and plant life, as long as such measures are not disguised trade barriers nor are discriminatory. This article has been rendered impotent in subsequent WTO jurisprudence. Already in the shrimp/turtle case, the appellate body has ruled that Article XX exemptions are "limited and conditional." Further burden of proof has been placed on those upholding environmental laws with the standard of "least trade restrictive" methods applied to determine "necessity." To date WTO dispute panels have never allowed an Article XX exemption.
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16. Steingraber, Sandra., "*Living Downstream: An Ecologist Looks at Cancer and the Environment*," Addison Wesley Publishing, 1997, p. 270.
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18. Institute for Health Policy, Brandeis University, for The Robert Wood Johnson Foundation. Chart 4 in *Substance Abuse: The Nation's Number One Health Problem, Key Indicators for Policy*. Princeton, New Jersey. October 1993, page 16.
19. Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Statement: Lead, June 1990.
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21. Thalidomide Victims Association of Canada Website, Copyright 8 1998-1999. <http://www.thalidomide.ca/wit.html>
22. Conversation between Dr. Herman Daly and David Batker of the Asia Pacific Environmental Exchange (APEX), 21 October 1999. Dr. Herman Daly is currently Senior Research Scholar at the School of Public Affairs at the University of Maryland. He is co-author of the influential book *For the Common Good*. His latest book is *Beyond Growth: The Economics of Sustainable Development*.

23. The Precautionary Principle can be found in the international treaties and declarations including: The Rio Declaration (1992, environment and sustainable development), the Montreal Protocol (1990, ozone depleting substances), London Convention (1991, ocean dumping), Convention on Biological Diversity (1992), U.N. Framework Convention on Climate Change (1992), Helsinki Convention (1992, protection of the Baltic Sea), Oslo-Paris Convention (1992, protection of the North-East Atlantic), Maastricht Treaty (1992, establishing the European Union), World Charter for Nature (1982), North Sea Ministers Conference Declaration (1987 and 1990), United Nations Environment Programme Governing Council Recommendations (1989), Bergen Declaration (1990, on sustainable development), Agenda 21 (1992, oceans chapter), Bamako Convention (1991, toxic waste trade to Africa), Central American Agreement (1992, toxic waste trade to Central America), Barcelona Convention and Protocols (1995, protection of the Mediterranean Sea), International Joint Commission (1990, 1991, protection of the North American Great Lakes)
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80. Letter on file with the Basel Action Network and Washington Toxics Coalition.
81. Basel 4, para. 2 (a)(b) and (d) require generation of hazardous and other wastes be reduced to a minimum; require countries to ensure that adequate facilities for managing wastes are available in their own countries; and that the transboundary movement of hazardous and other wastes is reduced to a minimum.
82. A leaked draft of Basel Convention implementation legislation available from the Basel Action Network reveals no restrictions on imported hazardous waste. Indeed this legislation has been stalled because of insistence by some US agencies that the existing ban on the importation of PCB waste into the United States be lifted as part of the new legislation which seems to be designed not only to implement the Basel Convention (without the vital Basel Ban Amendment) but also to implement the WTO rules in our waste importation and exportation laws.
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